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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,434	02/24/2004	David Arthur Welch	WELCH 4	8500
50525	7590	01/26/2009		
DUFT BORNSEN & FISHMAN, LLP			EXAMINER	
1526 SPRUCE STREET			KEEHN, RICHARD G	
SUITE 302				
BOULDER, CO 80302			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,434	<b>Applicant(s)</b> WELCH, DAVID ARTHUR
	<b>Examiner</b> Richard G. Keehn	<b>Art Unit</b> 2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,5,6,8-11,15,16 and 18-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,5,6,8-11,15,16 and 18-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Claims 1, 5, 6, 8-11, 15, 16 and 18-20 have been examined and are pending.**

**Claims 2-4, 7, 12-14 and 17 have been cancelled.**

***Response to Arguments***

1. Applicant's arguments, see cancellation of Claims 7 and 17, filed 10/22/2008, with respect to Claim Objections of Claims 7 and 17 have been fully considered and are persuasive. The objection of Claims 7 and 17 has been withdrawn.
2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the cited prior art references do not disclose peer communication devices. The references disclose peers, albeit agents, human or otherwise, communicating using devices. Applicant seems to suggest, in the argument "the operation is performed in the peer communication devices, not by some human being or the central processing computer," that the claimed invention contains peer-to-peer networking devices, which are not disclosed in the cited prior art. However neither the claims, nor the specification, support this argument as they do not disclose peer-to-peer networking. In addition, Applicant's figure 1 depicts a central control system (element 110). Nonetheless, the argument is moot since Examiner has modified the rejection to include peer-to-peer networking as an obvious variation of the previously cited prior art.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 5, 6, 8-11, 15, 16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 7,203,655 B2 (Herbert et al.), and further in view of US 2003/0083846 A1 (Curtin et al.) and US 2005/0086300 A1 (Yeager et al.).

As to Claims 1 and 11, Herbert et al. discloses a telecommunication system and method configured to provide distributed system monitoring, the telecommunication system comprising:

a control system (Herbert et al. discloses the central processing computer – Figure 1, item 120); and

a plurality of peer communication devices, where each peer [...], responsive to handling telecommunications data [...] (Herbert et al. disclose the Agents with their workstations, said agents using their workstations are the peers – Column 3, lines 42-47; Column 4, lines 48-48 disclose the contacts in a telecommunications network; Column 4, lines 57-59 disclose said contacts monitored for performance data);

the control system, responsive to receipt of the performance data from the communication devices, processes the performance data from each of the peer [...] to generate a performance file that indicates the performance of each of the peer [...], and transfers the performance file to each of the peer [...] (Herbert et al. disclose the PSS which uses the performance data from each of the communication devices to generate

reports that indicate individual and group performance analysis results and provides that information to the agents – Column 4, lines 1-3, and 10-22); and

each of the peer [...], responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer [...] to detect a fault (Herbert et al. disclose the agents using and configuring the performance report format for comparison of aforementioned individual and group performance metrics – Column 4, lines 41-42 and Column 7, lines 63-64); and

responsive to detection of the fault, at least one of the peer [...] processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault (Herbert et al. disclose the agent detecting less than respective performance {performance fault} – Column 6, lines 25-35; Column 1, lines 23-32 disclose the agent performing the recovery action of goal setting to improve job satisfaction).

Herbert et al. disclose the communication device directly collecting performance data and sending directly to the control system, but rather these limitations are indirectly performed by the ACD. Therefore Herbert et al. do not explicitly disclose, but Curtin et al. disclose each communication device collects performance data and transfers the performance data to the control system (Curtin et al. discloses the gathering and sending of performance data by each client – Page 1, ¶ [0023]; Figure 1 shows the data is sent to the control system).

Herbert et al. disclose peers communicating on devices, but do not explicitly disclose peer-to-peer communications, but Yeager et al. disclose peer communication

devices (Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine each communication device collects performance data and transfers the performance data to the control system taught by Curtin et al., with the collection of, and sending of, performance data to the control system taught by Herbert et al.

The ACD in the Herbert reference is the gatekeeper controlling all collection and reporting to the control system for the plurality of agent workstations. One of ordinary skill in the art at the time the invention was made would recognize this creates at least two problems to solve. Namely that (1) if the ACD fails, the entire reporting system fails; and (2) as workstations are replaced with newer technology, the ACD interface to said replaced workstations may also need to be modified, eventually to a point where modification is no longer possible. Hence one of ordinary skill in the art at the time the invention was made would have been motivated to place the function of collection and reporting to the controller onto the individual agents workstations so that as workstations are replaced, the ACD, as taught in Herbert et al., would not need to be redesigned or modified; and if a single collection / reporting agent fails, the whole system does not fail.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine peer communication devices taught by Yeager et al., with peer communication and monitoring taught by Herbert et al., in order to create a

self-administered monitoring environment capable of fault tolerance and increased reliability (Yeager et al. - ¶¶ [0017 and 0270]).

As to Claims 5 and 15, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 4 and 14 wherein the at least one peer communication device determines if the fault is cured by the at least one recovery action, generates a report of the fault if the fault is not cured by the at least one recovery action, and transfers the report of the fault to the control system (Curtin et al. discloses the client computer sending evaluation report – Page 1, ¶ [0023]; Figure 1 shows that data being sent to the control system; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6 and 16, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 5 and 15 wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the at least one peer communication device (Herbert et al. disclose a number of corrective recovery actions the control system can implement on the agent, including skill planning and scheduling – Column 4, lines 1-9; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 8 and 18, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11, wherein: each of the peer communication devices (Curtin et al. discloses the gathering and sending of performance data by each client – Page 1, ¶ [0023]) periodically transfers the performance data to the control system (Herbert et al. discloses periodic sending intervals – Column 3, line 65; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 9 and 19, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11 wherein the performance data includes a performance grade for each of the peer communication devices (Curtin et al. discloses the grading scale from Excellent to Poor – Figure 4; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 10 and 20, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11 wherein the performance file includes a list of performance data for each of the peer communication devices (Herbert et al. disclose the PSS which uses the performance

data from each of the communication devices to generate reports that indicate individual and group performance analysis results and provides that information to the agents – Column 4, lines 1-3, and 10-22; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270])

The motivation and obviousness arguments are the same as in Claim 1.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

- US 2002/0123919 A1 Customer-oriented telecommunications data aggregation and analysis method and object oriented system
- US 6,370,572 B1 Performance management and control system for a distributed communications network
- US 2004/0148383 A Performance data generating method for verifying service level of telecommunication network, involves sending performance data to backend system and presenting performance data to subscriber
- US 2005/0165854 A1 System for managing job performance and status reporting on a computing grid
- US 2005/0144274 A1 Apparatus for monitoring the performance of a

distributed system

- US 2004/0236547 A1 System and method for automated placement or configuration of equipment for obtaining desired network performance objectives and for security, RF tags, and bandwidth provisioning
- US 6,877,034 B1 Performance evaluation through benchmarking using an on-line questionnaire based system and method
- US 2003/0078846 A1 System, method and computer program product for auditing performance in a supply chain framework
- US 7,035,786 B1 System and method for multi-phase system development with predictive modeling
- US 7,203,655 B2 Method and system for providing performance statistics to agents
- US 6,974,328 B2 Adaptive interactive preceptored teaching system
- US 7,077,806 B2 Adaptive interactive preceptored teaching system incorporating remote image monitoring
- US 5,768,261 A System and method for identifying the technique used for far-end performance monitoring of a DS1 at a customer service unit
- US 2005/0091638 A1 Accessing information at object creation
- US 2004/0075690 A1 User interface for viewing performance information about transactions

.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 9:00am - 8:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchanwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R GK/

/Yasin M Barqadle/  
Primary Examiner, Art Unit 2456